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## SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request,  
Copies Available From:

Securities and Exchange Commission  
Office of Investor Education and Advocacy  
Washington, D.C. 20549-0213

Extension:

Rule 0-1

SEC File No. 270-472

OMB Control No. 3235-0531

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget a request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the “Act”)<sup>1</sup> establishes a comprehensive framework for regulating the organization and operation of investment companies (“funds”). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.<sup>2</sup>

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0-1 (17 CFR 270.0-1).<sup>3</sup> Rule 0-1, as

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<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> For example, fund directors must approve investment advisory and distribution contracts. *See* 15 U.S.C. 80a-15(a), (b), and (c).

<sup>3</sup> Investment Company Act Release No. 4 (Oct. 29, 1940) (5 FR 4316 (Oct. 31, 1940)). Note that rule 0-1 was originally adopted as rule N-1.

subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0-1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term "independent legal counsel," as defined in rule 0-1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules ("exemptive rules") under the Act.<sup>4</sup>

The Commission amended rule 0-1 to include the definition of the term "independent legal counsel" in 2001.<sup>5</sup> This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an "independent legal counsel." This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, "management organizations") or their

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<sup>4</sup> The relevant exemptive rules are: rule 10f-3 (17 CFR 270.10f-3), rule 12b-1 (17 CFR 270.12b-1), rule 15a-4(b)(2) (17 CFR 270.15a-4(b)(2)), rule 17a-7 (17 CFR 270.17a-7), rule 17a-8 (17 CFR 270.17a-8), rule 17d-1(d)(7) (17 CFR 270.17d-1(d)(7)), rule 17e-1(c) (17 CFR 270.17e-1(c)), rule 17g-1 (17 CFR 270.17g-1), rule 18f-3 (17 CFR 270.18f-3), and rule 23c-3 (17 CFR 270.23c-3).

<sup>5</sup> See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

“control persons”<sup>6</sup> during the past two years, rule 0-1 requires that the board's independent directors make a determination about the adequacy of the counsel’s independence. A majority of the board’s independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel’s prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel’s professional judgment and legal representation. Rule 0-1 also requires that a record for the basis of this determination is made in the minutes of the directors’ meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of “independent legal counsel” under rule 0-1. We assume that approximately 3,796 funds rely on at least one of the exemptive rules annually.<sup>7</sup> We further assume that the independent directors of approximately one-third (1,265) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal

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<sup>6</sup> A “control person” is any person – other than a fund – directly or indirectly controlling, controlled by, or under common control, with any of the fund’s management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

<sup>7</sup> Based on statistics compiled by Commission staff, we estimate that there are approximately 4218 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (3796) actually rely on at least one exemptive rules annually.

counsel.<sup>8</sup> We estimate that each of these 1,265 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 949 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately \$169,927.00. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (633 hours) would be incurred by compliance staff with an average hourly wage rate of \$235.00 per hour,<sup>9</sup> and one-third of the annual hour burden (316 hours) would be incurred by clerical staff with an average hourly wage rate of \$67.00 per hour.<sup>10</sup>

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

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<sup>8</sup> We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

<sup>9</sup> The estimated hourly wages used in this PRA analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. See Securities Industry and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry – 2010 (2010), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry – 2010 (2010), modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>10</sup>  $(633 \times \$235/\text{hour}) + (316 \times \$67/\text{hour}) = \$169,927.00.$

displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov) . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503, or by sending an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov) ; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov) . Comments must be submitted to OMB within 30 days of this notice.

Kevin M. O'Neill  
Deputy Secretary

November 3, 2011